

In the Matter of License No. 182428 and all other Seaman Documents
Issued to: ISAAC G. WELTY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1057

ISAAC G. WELTY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 29 August 1956, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Appellant's seaman documents upon finding him guilty of misconduct. Five specifications allege that while serving as Third assistant Engineer on board the United States SS WILLIAM A. M. BURDEN under authority of the document above described, on or about 27 November 1955, Appellant was wrongfully absent from his watch; on 21 February 1956, he failed to relieve the watch; on 21 February 1956, he wrongfully had 40 cases of beer in his room; on 10 January 1956, Appellant was wrongfully unfit for duty due to intoxication; on 11 January 1956, he wrongfully failed to report on board for his watch.

The hearing was conducted in absentia when Appellant failed to appear on 29 August 1956 as directed by written notice served on 27 August 1956. The Examiner entered pleas of not guilty to the charge and each specification on behalf of Appellant. The Investigating Officer made his opening statement and introduced in evidence entries in the ship's Official Logbook pertaining to the alleged offenses. The Examiner concluded that the charge and five specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright and three months on nine months' probation.

The decision was not served until 11 March 1958 due to difficulties in locating Appellant. Appeal was timely filed on 18 March 1958.

FINDINGS OF FACT

Between 29 August 1955 and 27 August 1956, Appellant was serving as Third Assistant Engineer on board the United States SS WILLIAM A. M. BURDEN and acting under authority of his License No. 182428 while the ship was on a foreign voyage.

On January 1956, Appellant was unfit to stand his 1200 to 1600 watch due to intoxication while the ship was at Sasebo, Japan. On the following morning, Appellant was not on board to stand his 0000 to 0400 watch. These two offenses were recorded as one entry in the ship's Official Logbook on 11 January. The entry states that Appellant was fined one day's wages for each offense (a total of \$35.86), the entry was read to Appellant on 12 January and his answer was: "Under protest." The logbook indicates that Appellant signed his reply. Under the completed log entry including Appellant's reply and signature, the signatures of the Master and Chief Engineer appear.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he was deprived of his rights in that the hearing was conducted in his absence even though he appeared on 29 March 1957 as directed. Also, Appellant did not stipulate that the Examiner's decision could be forwarded to him for service by mail.

OPINION

The findings and conclusions that the offenses alleged to have been committed on 27 November 1955 and 21 February 1956 were proved are reversed and these three specifications are dismissed. The only evidence pertaining to these specifications are entries in the Official Logbook which are not substantially in compliance with the requirements of 46 U.S.C. 702 as are the entries, referring to 10 and 11 January 1956, mentioned in the above findings of fact. The entry with respect to 27 November does not indicate whether Appellant was given an opportunity to reply to the entry and it does not state that a copy of the entry was either given or read to Appellant. The entries concerning 21 February do not contain the signature of the Master and a member of the crew below the statements that the entries were read to Appellant and his purported answers. These shortcomings fail to comply with the requirements of 46 U.S.C. 702 to such an extent that the log entries alone are not sufficient to make out a prima facie case as to these alleged offenses. For other rulings concerning the adequacy of logbook entries to make out a prima facie case, see Commandant's Appeal Nos. 922 and 1027.

All decisions of the examiners are required to "include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record . . ." 46 CFR 137.09-65, Administrative Procedure Act, sec. 8(b) (5 U.S.C. 1007(b)). In this case, the Examiner did not relate the reasons for his findings and conclusions, pertaining to the three specifications herein

dismissed, as required by this statute and regulation. The only bases in the record for such findings are the logbook entries and the statements of the Investigating Officer. The former are not adequate to make out a prima facie case, and the latter do not constitute evidence on the merits. See Commandant's Appeal No. 806. In connection with admissions made by Appellant to the Investigating Officer about the 40 cases of beer in Appellant's room, such admissions made during an investigation are not admissible in evidence unless it is established that the person charged had been previously warned that he had the right to counsel, he was not required to make a statement and any statement he made could be used against him. See Commandant's Appeal No. 916. The record does not support the conclusion that any such warning was given in this case. Therefore, any reasons which might have been given by the Examiner with respect to the findings as to these three specifications would not have been sufficient to justify his conclusions that these specifications were proved.

It is not apparent that Appellant was deprived of his rights with respect to the specifications alleging failure to stand his watches on 10 and 11 January. Appellant was given written notice to appear at the hearing on 29 August 1956 - not 29 March 1957 as he states on appeal. The record shows that the hearing was conducted on 29 August 1956 and that these two alleged offenses are supported by properly made entries in the Official Logbook. This constitutes a prima facie case which was not rebutted by Appellant. His failure to submit to submit his defense was due to his own neglect in failing to appear on the date when the hearing was scheduled. The Investigating Officer stated that Appellant was present on 28 August 1956 and he was not again heard from although then advised that the hearing would be on 29 August 1956. Since Appellant was not present at the hearing, it was proper to obtain service of the decision on Appellant by mail or any other convenient method regardless of the lack of stipulation by Appellant as to the method of service.

In view of the dismissal of three of the five specifications, the order of suspension will be modified, but only to the extent of reducing the outright portion of the suspension from three to two months because it is considered that the original order of the Examiner was a lenient one for the offenses involved. It must be recognized that Appellant's behavior was serious both from the view points of discipline and safety since he was serving as a licensed officer on the ship.

ORDER

The order of the Examiner dated at Seattle, Washington, on 29 August 1956, is modified to provide that License No. 182428, and

all other documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended outright for a period of two (2) months. Appellant's documents are further suspended for an additional three (3) months which shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of the outright suspension or within nine (9) months of the termination of the outright suspension.

As so MODIFIED, said order is

AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 24th day of July, 1958.